

RESULTS:

**STATEWIDE CONSISTENCY REVIEW
OF THE
SECTION 106 PROGRAMMATIC AGREEMENT
JANUARY 1-JUNE 30, 2004**

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DIVISION OF ENVIRONMENTAL ANALYSIS
CALIFORNIA DEPARTMENT OF TRANSPORTATION
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EXECUTIVE SUMMARY

Since going into effect on January 1, 2004, the Section 106 Programmatic Agreement (PA) has improved project delivery by delegating to Caltrans a substantial role in the process for compliance with Section 106 of the National Historic Preservation Act for the Federal-Aid Highway Program in California. This agreement is one of the broadest and most ambitious PAs in the nation, covering the entire federal-aid highway program and directing significant responsibility to Caltrans.

The PA has already achieved considerable project cost and time savings for Caltrans, and it has substantially reduced routine workload for both the Federal Highway Administration (FHWA) and the State Historic Preservation Officer (SHPO). Under the PA, project review turnaround time has been significantly shortened, as many projects either no longer require review by these agencies or they go directly to SHPO with concurrent FHWA review. SHPO's own review time was reduced from months in some cases prior to the PA to an average turnaround time of only 18 days in a post-PA sampling. Such project delivery time savings demonstrate the PA's potential as a highly effective environmental compliance streamlining tool.

At the same time, Caltrans has taken on greater responsibility in exchange for this notable streamlining. Caltrans Professionally Qualified Staff (PQS) carry the brunt of this responsibility, as they are charged with ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work or consideration for resources. That responsibility has been accepted and handled well by Caltrans staff overall, as evidenced by the results of a quality assurance and consistency review of all PA-related work statewide during the first six months under the PA. This report summarizes the findings of that statewide review.

ACKNOWLEDGMENTS

The PA quality assurance and consistency reviews were conducted during the first six months under the PA by the Caltrans Headquarters Cultural & Community Studies Office (CCSO) under the direction of Greg King, Office Chief, and overseen by Gary Winters, Chief, Division of Environmental Analysis. The CCSO in-house review team of Dorene Clement, Glenn Gmoser, Jill Hupp, and Dana Supernowicz, with substantial assistance from other CCSO staff members, reviewed documents sent in by the districts prior to submittal under the PA, held regular teleconferences addressing staff questions, and distributed periodic bulletins on issues of concern. This review continued throughout the six-month review period.

The second phase of the program began about half way through the review period and took place in the districts. It included visits to all 12 districts, field reviews of selected projects, and meetings with most of the district cultural resources staff. It was followed up by individual letter reports to each district. The team for this second phase consisted of Dorene Clement and Glenn Gmoser from CCSO and a staff member from one of the districts on a rotating basis; on several reviews, the team also included Germaine Belanger from the Headquarters Division of Local Assistance.

With the generous support of their supervisors and management, the following Caltrans staff made time in their busy schedules to assist CCSO in conducting the second phase of the reviews, and we would like to thank them for their intelligent and insightful contributions:

Germaine Belanger, Headquarters Local Assistance
Chris Brewer, District 6
David Bricker, District 8
Jody Brown, District 3
Jennifer Darcangelo, District 4
Kelly Hobbs, District 6
Valerie Levulett, District 5
Daryl Noble, District 3
Marty Rosen, District 11
Kelda Wilson, District 5

We further express our appreciation to Caltrans cultural resources staff and management statewide for their participation in the PA consistency reviews, and for the courteous reception and excellent cooperation extended to the PA review team.

We also gratefully recognize that the success of the first six months under the PA has been aided immeasurably by generous assistance and guidance from Hans Kreutzberg of the SHPO's staff, and by careful, intelligent oversight from Joan Bollman of FHWA.

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INTRODUCTION

The Programmatic Agreement among the Federal Highway Administration, the Advisory Council On Historic Preservation, the California State Historic Preservation Officer, and the California Department Of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Federal-Aid Highway Program in California (PA) went into effect on January 1, 2004, substantially streamlining Caltrans procedures under Section 106 of the National Historic Preservation Act.

For the first six months under the PA, the Caltrans Cultural & Community Studies Office (CCSO) conducted a quality assurance and consistency review of all PA-related work statewide. This effort included document reviews, visits by a team of CCSO and district staff to all 12 districts, field reviews of selected projects, meetings with staff, regular question-and-answer teleconferences, periodic Section 106 bulletins, and individual written reports to each district.

The six-month review period was considered to be a continuation of the PA training, a mechanism for learning rather than a critique of compliance, per se. The reviews and the written reports to each district addressed issues and offered suggestions but did not rate the districts as such or single out individual staff performance. They were intended to be constructive, to offer helpful guidance with a statewide perspective and in-depth knowledge of the PA's intent, to ensure consistency in interpretation within Caltrans, and to share lessons learned between districts.

This report summarizes the results of that statewide quality assurance and consistency review; addresses the identified accomplishments, issues, and remaining challenges; and offers suggestions for future actions. These findings are now submitted to the Federal Highway Administration (FHWA), the Advisory Council On Historic Preservation (ACHP), the California State Historic Preservation Officer (SHPO), and the Caltrans Director and District Directors.

SUMMARY RESULTS OF THE PA CONSISTENCY REVIEWS

Overall the results are highly satisfactory. Upon going into effect on January 1, 2004, the PA authorized Caltrans to carry out substantial elements of the compliance process under Section 106 of the National Historic Preservation Act. In the first six months, the PA has improved project delivery while continuing to take effects to cultural resources into account, achieving considerable project cost and time savings through:

- Delegating certain activities directly to Caltrans Professionally Qualified Staff (PQS).
- Eliminating or reducing review times by other agencies.
- Defining properties and activities that do not require further consideration.

Preliminary data voluntarily reported in midsummer 2004 by three Caltrans districts documented improvements in project delivery resulting from the PA. Their figures showed that a total of 103 projects had been screened, with estimated time savings of

1700 person-hours of effort, and a project schedule time savings of one to two months per project. Those districts also reported that exempting properties from evaluation had saved an estimated 48 person-hours. In addition, they reported that using the PA for five eligibility determinations and two No Historic Properties Affected findings saved 30-60 days in the project schedule per document.

Such project time savings clearly demonstrate the PA's potential as an effective environmental compliance streamlining tool, by reducing or eliminating project work effort and review time in those situations where historic and archeological resources are not at risk.

By delegating authority to Caltrans to perform the functions of FHWA and the SHPO for a majority of the Section 106 process, this agreement has effected the following savings during the six-month review period:

- The PA significantly reduced the volume of documents submitted to both FHWA and the SHPO, thereby enabling their limited staffs to focus efforts on larger, more complex projects.
- FHWA reported saving two to three hours per project, with FHWA Transportation Engineer workload reduced by approximately one hour per project, or 103 person-hours.
- A sampling of the SHPO's log in/log out data showed a substantial reduction in SHPO turnaround time on Caltrans projects, from weeks or months in some cases, to an average of only 18 days.
- Project schedules have benefited from the time saved by far fewer submittals to review agencies and by time no longer spent waiting for those reviews.

This streamlining is achieved at the cost of greater responsibility for Caltrans PQS, who are most accountable for the success of the PA. Under the PA, PQS are charged with ensuring that cultural resources are properly taken into account and that there is no loss in quality of work. Should PQS fail to do so, the PA itself would be put in jeopardy. PQS must be able to handle this responsibility and to resist any pressure, either overt or implied, internal or external, to proceed in any manner other than in accordance with professional judgment.

It is gratifying to report that Caltrans PQS who are given this high level of responsibility under the PA are overwhelmingly implementing the PA responsibly, expending an appropriate level of effort, making good decisions, and taking advantage of the PA's streamlining opportunities. They are performing very well for the most part, and Caltrans staff and their management are to be commended for their successful transition to this new way of doing business.

The results of the quality assurance program and consistency review of all PA-related work statewide provide evidence that this responsibility has been accepted and handled appropriately by Caltrans during the first six months under the PA. Overall, the staff is doing a good job in implementing the PA. While some problems have been encountered, most were handled as part of the learning process, and the majority of issues were resolved during the six-month review period.

QUALITY ASSURANCE MEASURES

Most importantly, the quality of work has been maintained under the PA, thanks to the quality assurance program that is key to the PA's success. The primary quality assurance measures during the initial six-month period included:

- **Intensive training:** Prior to implementation of the PA, CCSO administered training sessions covering all aspects of PA procedures and process to all Caltrans cultural resources professional staff statewide and to some FHWA staff. This training was, and will continue to be, prerequisite to staff certification as PQS, and it will be given again as new staff are hired. Training has also been provided on request to Local Assistance and other Caltrans staff and to local agencies.
- **Professional qualifications review and certification:** Before being certified as PQS and thus able to perform tasks under the PA, all cultural resources staff submitted a "Professionally Qualified Staff" certification form for review, demonstrating that they met the professional qualifications standards, as outlined in Attachment 1 of the PA.
- **Document reviews:** All documents to be submitted under the PA to SHPO or FHWA were first sent to CCSO and reviewed for consistency with the PA.
- **District visits:** Teams of CCSO and district staff visited each district, met with staff, discussed issues and answered questions, participated in project field visits as requested, and conducted consistency reviews of all PA documents that were retained in the district.

Additional quality assurance measures that were instituted during the six-month review period and that have since continued include:

- Regularly scheduled statewide teleconferences
- Section 106 bulletins that focused on PA issues
- Bulletins, teleconference notes, and other guidance posted on the CCSO website
- Ongoing PA consistency and peer reviews, as requested
- Additional training presentations provided, as requested
- Training materials made available for district use

Another continuing measure is an extension of the PA consistency review in one district, where staff from the regional office had conducted most of that district's work under the PA. As there was not yet a sufficient body of work produced by district PQS to demonstrate consistency, the PA review team requested the opportunity to extend the review period until an adequate body of work had been produced by the district's own staff. This review remains ongoing.

The six-month review was a learning period, and the PA review team is confident that the measures undertaken then have greatly improved the accuracy and consistency of PA implementation statewide. While some issues remain, they are generally now more in the finer details of interpretation, and they are being addressed as they arise through Caltrans' ongoing quality assurance measures.

It would have been unrealistic to expect perfect understanding and compliance with the PA in the first six months, but overall program success and a high level of statewide consistency were indeed achieved in that short time period. This accomplishment is largely due to the efforts of the Caltrans PQS themselves, to their willingness to change and grow with the PA, and to their acceptance of quality assurance measures. The PA consistency review process clearly revealed that Caltrans is fortunate in the quality of its high-performing cultural resources staff.

ISSUES RELATED TO APPROPRIATE USE OF THE PA

In the great majority of instances, the PA is now being implemented appropriately, with staff using good judgment and taking full advantage of the PA's streamlining, while not exceeding its limits. At the outset, however, implementation was more uneven. The PA's language and intent were not always as clear as the authors had expected, and some provisions were subject to differing interpretations. Consequently, there was lack of consistency in application in some instances. In other cases, minor misunderstandings or misreadings led staff on unexpected paths. Discussion, further training, and when necessary, clarification from SHPO and FHWA combined to achieve satisfactory resolution of most issues.

The following areas were found to be of concern and where questions arose as to appropriateness in implementation of the PA:

RESISTANCE TO THE PA

Among Caltrans staff, there was some initial resistance to the procedural changes in the PA, which came in several forms. For some individuals, simply the change itself appeared too much to take: "That's not the way we do things in this district." Others worried that cultural resources were being put at risk. Either they didn't trust others' judgment and feared that less-obvious important resources would be overlooked, or they felt that a lesser level of effort, such as for screened undertakings or exempt properties, was professionally irresponsible. For these or other reasons, some staff appeared initially reluctant to take advantage of the flexibility and streamlining inherent in the PA.

Attempts were made to relieve concerns about risks to resources by pointing out that FHWA, ACHP, the SHPO, and Caltrans had signed the PA and accepted its provisions, and that Caltrans to exceed the SHPO's level of concern for resources. One of the PA's goals was to reduce staff time on projects without cultural resources at stake, so as to focus staff efforts on those projects that do have potential to involve or affect historic properties. These points were made in repeated discussions, and with time, resistance has lessened, but it is expected however, that some staff may continue to feel a level of reservation until they are more comfortable with the new procedures.

QUESTIONABLE USE OF THE PA

For the most part, the PA has been used appropriately, and any exceptions have erred on the side of being too cautious, of failing to use streamlining opportunities, rather than of

pushing them too far or cutting corners. However, there were a few instances, listed below, where actions under the PA came into question:

Examples

- **Screening with conditions:** Some PQS screened undertakings but included provisions for monitoring, which constituted a condition on the undertaking. As no conditions can be imposed on a screened undertaking, however, so setting conditions made those undertakings unscreenable. In most cases, the monitoring condition appeared to be more the result of excessive caution than of actual potential for resources to be present. It was noted that if monitoring is warranted, it is very likely that the project area is too environmentally sensitive to qualify for screening.
- **Screening with potential effects:** One project involving work on an eligible property was treated as a screened undertaking. Because work on a historic property clearly seems to have *potential* to affect it, the project did not appear to meet the requirements of PA Attachment 2 for screening. As the work was proposed for noncontributing elements of the property, a finding of No Historic Properties Affected could have been appropriate, at little extra effort.
- **Screening in a sensitive area:** Another project that was screened perhaps warranted a higher level of documentation because of the area's sensitivity and potential for subsequent activities of a similar nature. It was obvious that the PQS had conducted a responsible level of investigation, however, and had taken the project's potential for effects into account. The benefit of elevating this undertaking from screening to preparing a Historic Properties Survey Report (HPSR) would have been in providing more substantial documentation to justify the project's Area of Potential Effects (APE) and to support the conclusion that the undertaking would not affect historic properties, despite being in an area of high sensitivity. This documentation would have been useful should questions arise, and it would have been useful for subsequent undertakings in that area.
- **Excluding sites from APE instead of establishing ESAs:** A finding of No Historic Properties Affected was based on excluding archeological sites from the APE when they were known to be in or immediately adjacent to the right of way. It would have been appropriate under PA Attachment 3 to include the sites in the APE, consider them eligible for the purpose of the project, and reach a finding of No Adverse Effect with Standard Conditions by establishing Environmentally Sensitive Areas (ESAs) which could have better ensured the sites' protection.

In such cases, higher-level findings would have required relatively little additional effort and would have still expedited project delivery. PQS can elevate findings when warranted without necessarily conducting extensive studies, an example of the PA's inherent flexibility and its provisions for streamlining at almost every level.

BETTER UTILIZATION OF THE PA

In some districts, it was suggested that staff could manage their heavy workloads better if they were more willing to take fuller advantage of the PA's streamlining. It was pointed

out that the PA's shortcuts could be more thoroughly utilized without compromising resources, particularly in the following areas:

- Finding projects screenable under PA Attachment 2, when it is appropriate to do so.
- Exercising professional judgment on the need for archeological records searches, rather than automatically requiring them.
- Allowing Caltrans archeological staff to conduct needed archeological records searches themselves on Local Assistance projects, rather than going through costly rounds of reviews and staff time in repeated attempts to obtain information through third parties (if restrictions on use of funds can be overcome).
- Focusing more on content and less on form, especially in reviewing consultant-prepared documents. For example, substantial time could potentially be saved by not requiring format revisions or minor changes if a document's content is basically sound, if its imperfections will not jeopardize the outcome, or if necessary revisions can be addressed in the transmittal letter or memo to file.
- Additionally, when PQS can make a determination that a project is screenable, or can concur in a No Historic Properties Affected finding, it may not be necessary to expend a lot of effort requiring consultants to modify their reports to include additional information already possessed by the PQS.

ISSUES RELATED TO SPECIFIC PA ATTACHMENTS AND STIPULATIONS

ATTACHMENT 1, PROFESSIONALLY QUALIFIED STAFF (PQS) STANDARDS

Overall, there have been few problems with staff accepting and functioning under the standards in Attachment 1. All cultural resources staff who are now working under the PA have gone through PA training, have had their qualifications reviewed, and have been certified as PQS. For the most part, Caltrans PQS have taken their responsibilities seriously, not exceeding the role set for their level of qualifications, and asking for guidance and assistance when appropriate. Staff are to be commended for their conscientious adherence to the requirements of PA Attachment 1.

Uncertified staff acting as PQS

One potentially serious problem was discovered during the PA consistency review period, but it was subsequently resolved. It was found that a very small number of staff were acting as PQS, approving documents and conducting peer reviews without having been certified to do so. In each case, the individual was a qualified professional making appropriate decisions, but Attachment 1 of the PA clearly states that only certified PQS are permitted to conduct these activities. It was pointed out that this was a serious issue, and that to be consistent with the PA, those individuals must either become certified as PQS or cease acting in that capacity. All agreed to comply with Attachment 1, subsequently submitted their qualifications, and were certified as PQS.

Specific documents or actions that require Principal-level review

Clarification was requested as to whether memos to file constitute “compliance documents,” as specified in Attachment 1, requiring Principal-level review, which is by a Principal Investigator (PI)—Prehistoric Archaeology, Principal Investigator—Historical Archaeology, or Principal Architectural Historian). Some districts have only a single or no Principal-level PQS (see chart on Page 12, below), which means that compliance documents have to be sent to another district or Headquarters for that review. After discussion, it was suggested that, pending direction to the contrary from the PA’s signatories, compliance documents could be defined as those addressing an undertaking subject to review under Section 106. Thus screening memos (for undertakings exempt from review) and negative findings (no properties requiring evaluation; no historic properties subject to effect), as documents transmitted solely to file, would not constitute compliance documents requiring Principal-level peer review under Attachment 1. However, for quality control purposes under the PA, it was recommended that provision for annual Principal-level review of such documents be included as part of the annual reporting process.

Additional related comments

- PQS level should be specified when citing staff’s PQS standing; there is no need to include an additional statement of qualifications in reports they submit.
- Peer review by a PQS at the appropriate level is required for technical documents, and the peer reviewer and PQS level should be identified. However, peer reviewers should not be expected to sign a report’s title page, as they are not responsible for the final document, which in any case may not fully reflect their review comments.
- For consultant-prepared documents, PQS are responsible for ensuring that consultants meet appropriate professional qualifications standards and that consultant-prepared documents are peer reviewed by Caltrans PQS at the appropriate level.
- As Local Assistance cultural resources documents were not available for review in every district during the PA consistency reviews, it was emphasized that Local Assistance projects also require review by PQS under the PA.

ATTACHMENT 2, SCREENED UNDERTAKINGS

Overall, projects are being screened appropriately under Attachment 2 of the PA, and the screening process shows consistently sound judgment and reasonable level of effort. It is apparent that PQS are making good decisions, asking questions when more details are needed, and acting responsibly in screening projects. Most screening memos are well written and files are logically organized. Earlier surveys and records searches are being efficiently utilized, and most staff are providing good service and quick turnarounds on screenings.

Screening is the aspect of the PA that seems to have the greatest potential for confusion or misuse, but while not without some difficulties, for the most part, it is fully consistent with Attachment 2 of the PA.

The following comments and suggestions were provided during and as a result of the PA consistency review visits to the districts:

Is it screenable?

- Care should be taken in determining whether new actions taking place in association with ongoing projects are screenable, or if they should instead be considered part of an existing project, to be addressed under 36 CFR 800 in a supplemental HPSR or other addendum to the original document. Changes to an existing, pre-PA project can be considered as a “new” undertaking coming under the PA only when closure (completion of the compliance process) had been achieved on the previous Section 106 consultation. The new action is then separate from the previous consultation and can be screenable under the PA, even if the transportation project is ongoing and the same Expenditure Authorization (EA) and project numbers are being used. However, FHWA has expressed concern over the implications of referring to such actions as *new projects* or *new undertakings*, and consequently, careful phrasing to avoid those terms is recommended until consensus can be reached on acceptable language.
- Documentation for one undertaking gave the impression that it had been screened before it had reached a screenable stage. The project has to be adequately defined, with sufficient information, before it can be screened.
- Relinquishments do not qualify as screened undertakings (although that was a logical if erroneous reading of an earlier version of the screening list).
- Undertakings cannot be screened if *any* conditions, such as monitoring, are imposed.
- Some screening memos contained a warning regarding late discoveries. It was suggested that if there is reasonable potential for discoveries so that a warning is needed, then the project might not meet screening criteria.

Documentation of screening

- The PA states that either a memo to file or the CE/Section 106 Checklist form can be used to document screenings. However, it became apparent during the consistency reviews that the form is much less useful than a memo in conveying essential information. Consequently, it is recommended that narrative memos rather than checklist forms be used to document screenings, to ensure that an adequate level of information, particularly an explanation of process and findings, is included.
- In a few instances, two separate memos were prepared for a single undertaking and even filed in different offices. Only one screening memo should be produced per undertaking, as the screening applies to the undertaking, not to types of resources. It can be prepared by a PQS in any discipline, consulting with other disciplines as necessary, but resulting in a single memo. Multiple memos create a high risk for misinterpretation, such as a premature assumption that screening has been completed, based on a partial review.
- Screening memos should be specific as to the project that is being screened, such as by citing the date of plans that were reviewed or by providing a complete project description, in case of subsequent project changes.

- It would be helpful to include a map of the project area and a brief statement of how the screening process was conducted, including sources consulted and the dates and participants of any field investigations undertaken. This documentation of the screening process and the reasoning followed will be valuable support for the screening, should the finding be questioned.
- Backup documentation in project files is generally good and fully adequate to support the decision-making process. Because screening memos may need to stand alone, however, it is recommended that each memo should contain a complete explanation of what was screened.
- The recommendation was to employ consistent terminology for findings, but to avoid boilerplate language in order to provide specific, accurate details for each screening.
- When doing a Programmatic CE, PA compliance should still be documented and evidence of screening provided, even when the same PQS is conducting both reviews.
- All screening classes that apply should be cited.
- Words that imply reservations in the finding, like saying there was “virtually” no potential for effect, should be avoided. If there is potential for effect, the project cannot be screened.
- Some screening memos have a useful cautionary statement, which should perhaps be standard, that if the project changes, it needs to be returned to the PQS for review and possible rescreening.
- One district employs the excellent practice of having the Maintenance Engineer sign off on screening memos to demonstrate concurrence with project descriptions.
- Screening completes Section 106, unless the project changes, and no further statement or effect finding is needed.

Project changes after screening

One concern is the question of whether district PQS are being given the opportunity to review previously screened projects when project scope or design change. If projects undergo changes after initial screening, they must be rescreened, and it was not clear from document review that this is always taking place in every district.

If changed projects are being implemented without rescreening, it could be a serious issue and inconsistent with the direction established in PA Attachment 2. The PA review team urged consideration of procedures in each district, if not already in place, to ensure that both state and local agency projects are returned for PQS rescreening whenever there are project scope or design changes.

Suggestions and recommendations

- Annual review, or some other form of ongoing review, of screened undertakings for quality control is recommended, to ensure that PQS are not being pressured into screening projects against their better judgment. This review would also help in maintaining consistent statewide application of the screening criteria.

- Based on their experience in using the PA, several district PQS have suggested revisions to the Attachment 2 list of screened undertakings, including adding the following:
 - Installation of new traffic signals
 - Installation of rumble strips
 - Minor work on Category 5 bridges that are over 50 years old
 - Installation of roadside call boxes

ATTACHMENT 3, AREA OF POTENTIAL EFFECTS (APE) DELINEATION

Staff are mostly doing a good job of producing logical, well-defined APEs that are consistent with PA Attachment 3. The PA has not resolved all APE issues, however, and the process for appropriate delineation of APEs continues to plague a number of staff.

Issues in setting APEs

- **APEs that are too small:** When APEs are too restricted, it is generally the result of failure to include entire properties, such as slicing through a parcel containing buildings and structures, or cutting off the portion of an archeological site that extends beyond the right of way. Generally, entire parcels or sites should be included within the APE. If part of a property is subject to effect, that typically constitutes potential for effects on the property as a whole.
- **APEs that are too large:** APEs on some projects are larger than needed. Following the guidance in PA Attachment 3 and reducing the APE to the area actually subject to effect will eliminate unnecessary studies of the excess area. When APEs are too expansive, it is commonly the result of excessive caution, such as extending the APE to create an unnecessary “buffer” zone of vacant land, or assuming unlikely possibilities, such as indirect effects on a buried pipeline.

Such APE problems are diminishing, but they are not expected to be resolved completely anytime soon. A focused teleconference to discuss the topic of APEs is currently being planned, and further guidance, perhaps including case studies addressing areas of ongoing confusion, may be needed.

Additional related comments

- APE maps must be signed by a PQS and the Project Manager (for Local Assistance projects, the Project Manager is the District Local Assistance Engineer, or DLAE).
- Responsibility for signing APE maps cannot be delegated.
- APE maps prepared prior to the PA may be used for projects subsequently submitted under the PA, when the APE meets the requirements of PA Attachment 3, by adding the Project Manager and PQS signatures to the map.

ATTACHMENT 4, PROPERTIES EXEMPT FROM EVALUATION

Most PQS are implementing Attachment 4 responsibly, and there was little indication of inappropriate exempting of properties that should have warranted studies. On the contrary, there was initial reluctance in a few districts to exempt certain types of

properties, primarily buildings, that did qualify for exemption. This appeared to be out of conscientious concern that exempting large numbers of properties without careful study of each would result in overlooking less-obvious or more recent important properties.

In discussing this concern, it was pointed out that it was up to the professional judgment of the PQS to decide when more effort or further consideration are needed, and that they are not *required* to exempt properties if they feel evaluation is warranted. However, in executing the PA, the SHPO, ACHP, FHWA, and Caltrans have agreed that the types of properties listed as exempt have little potential for significance, and that our staff time is better spent on other properties likely to have such potential. It is therefore not professionally irresponsible for appropriately qualified PQS and consultants to exempt properties in accordance with Attachment 4, based on their own knowledge and expertise and on any additional effort they find necessary.

There was also initial misunderstanding among PQS in a few districts who thought that they were to be held personally accountable for the accuracy of exemptions in architectural surveys they reviewed, particularly in consultant-prepared documents. They also questioned whether all PQS and qualified consultants could be trusted to identify important buildings of recent vintage. Consequently, they were requiring documentation of exempt properties (but generally buildings only) in survey reports, including such information as addresses, parcel numbers, dates of construction, and photographs.

Under PA Attachment 4, either a PQS or a qualified consultant may exempt properties without being required to document them; they need only demonstrate their qualifications to do so. Requiring documentation of exempt properties is not considered to be consistent with PA Attachment 4 or with the PA's streamlining intent. Imposed as a requirement in only a small number of districts, it created inconsistency between districts statewide. It also caused confusion among consultants working in multiple districts, who objected strenuously to the unnecessary additional workload, and pointed out that it affected their ability to bid accurately and competitively on jobs.

After discussion, and with the understanding that it is appropriate to review a consultant's qualifications and methodology, staff agreed to cease requiring documentation of exempt properties in reports they reviewed. This should allow both PQS and consultants to benefit fully from this provision of the PA at minimal risk to cultural resources.

It is clear that some PQS continue to compile and maintain their own documentation of exempt properties, with the objective of having that information available should another project take place in the same area. This may indeed have value for those few properties where substantial research has to be conducted before exempting them. In most cases, however, it is likely that earlier findings would be of little value, as conditions change, and the same level of effort would be required on subsequent surveys regardless, perhaps even extra effort in attempting to correlate earlier survey results to current conditions. In any event, keeping personal records of exempted properties, while not necessary under the PA, is not an issue for PA consistency. Rather, investment of staff time documenting exempted property types for their own files is between PQS and their supervisors or management.

FINDINGS OF NO ADVERSE EFFECT WITH STANDARD CONDITIONS (STIPULATION X.B.2)

In general, the PA provision for findings of No Adverse Effect with Standard Conditions has been properly applied and offers a good example of the PA's streamlining capability. The two Standard Conditions are ESAs and Rehabilitations.

Standard Condition, ESA

No Adverse Effect findings can be achieved under the PA by establishing protective ESAs around archeological sites. This finding has been effectively applied for the most part and has resulted in substantial project delivery streamlining.

Some problems were noted in early attempts to use ESAs in accordance with Attachment 5 of the PA, notably in regard to providing adequate documentation to support the finding. Report authors were reminded of the need to fully document all relevant information about the site, including results of Native American consultation and the nature of project activities in the site vicinity, to meet Attachment 5's requirements. This has since been accomplished in specific No Adverse Effect findings (presented in HPSR chapters or as free-standing supplementary reports) which included clear ESA action plans. It is anticipated that useful models will continue to be developed and enhanced with future use.

It was also noted that ensuring that commitments will be followed is potentially problematic when ESA action plan responsibilities are assigned to parties outside Caltrans (e.g., local governments). District solutions have included ESA action plan sign-offs, co-signing submitted reports, and letters of commitment from local project proponents.

Standard Condition, Rehabilitation

The other Standard Condition for achieving a No Adverse Effect finding is when rehabilitation of a historic property is in accordance with the Secretary of the Interior's Standards for Treatment of Historic Properties (36CFR68). This condition also is being appropriately applied, and as required, Principal Architectural Historians are reviewing rehabilitation plans and specifications to ensure compliance with the Standards. Care should be taken to document that PQS Principal Architectural Historians have reviewed those plans as required, should issues arise later.

However, a problem has arisen in implementation for certain projects, where funding to develop rehabilitation plans and specifications does not become available until after completion of Section 106 compliance, but at the same time, Section 106 cannot be concluded until plans have been developed and reviewed. Discussions with SHPO and FHWA addressed this Catch-22 situation, and agreement was reached on an approach toward a solution. In consultation with PA signatories, Caltrans will develop a procedural blueprint for compliance with this stipulation, to be an attachment to the PA, and FHWA will enforce it by withdrawing project funding should plans subsequently fail to comply with the Standards.

REMAINING CHALLENGES

While the overall report is highly positive, two challenges remain that have potential to affect the continuing successful implementation of the PA: (1) staffing shortages and uneven distribution and (2) internal organizational obstacles.

STAFFING ISSUES

Staffing is perhaps the greater challenge, as the PA requires PQS involvement in all projects, including Local Assistance, and staff are unevenly distributed in both numbers and qualifications and already seemingly stretched thin in some districts. Of particular concern is the statewide distribution of Principal-level staff, which ranges from districts having qualified PQS at the Principal level in all three disciplines, to those having no Principals at all. Lack of appropriate Principal-level staff can limit a district's ability to conduct and supervise its own work, to address the full range of resources, and to conduct internal peer reviews under the PA.

Current Principal-level distribution is shown below:

District	Principal Investigator— Prehistoric Archaeology	Principal Investigator— Historical Archaeology	Principal Architectural Historian
1	2		
2	2		1
3	4		2
4	5	1	4
5	5	1	
6	6		3
7	1		2
8	1	1	3
9	1		
10	1	1	1
11	4		
12			
HQ	3	3	7
Total	35	7	23

It can be seen that while most districts have a Principal Investigator (PI) in Prehistoric Archaeology, only four have a PI in Historical Archaeology, and only seven have Principal Architectural Historians (PAH). In time, it is expected that other PQS will advance to the level of Principal by attaining the necessary additional education or experience, or that new staff will be hired at that level, which will help districts in conducting their own work. Workload does vary, however, and not all districts have need for full-time PQS in each of the disciplines.

Currently, when staff with particular PQS standing are needed, there is generally recourse to the appropriate PQS in a neighboring district, regional office, or Headquarters. In fact, Headquarters CCSO is expressly staffed to provide such support to the districts. While this approach is working adequately for the most part, some managers are reluctant to

share their staff with other districts, and going outside the district for routine activities is not always the most effective or efficient use of staff time.

Adequate staffing by appropriately trained and qualified PQS at all levels will be essential to continuing to meet the provisions of the PA. Districts that are dependent on a very few cultural staff are especially vulnerable to the risk of project delivery delays under circumstances of even temporary staff absence.

In addition, Local Assistance work is expected to increase substantially next year, at which point it may strain the ability of existing PQS to maintain the current high level of service. Recognizing this need, Headquarters Local Assistance submitted a Budget Change Proposal to augment district staff with an additional nine positions to handle Local Assistance projects, but that effort was unsuccessful. However, it is anticipated that with the end of the hiring freeze, additional professional staff can be hired to supplement existing staff.

ORGANIZATIONAL STRUCTURES

Overall, cultural staff are performing well and managing their work effectively even where they face what appears to be challenging organizational structures, but there is concern for continuity and consistency in these situations. Districts have developed their own unique structures in some instances that make it difficult to track accountability for actions under the PA. In addition, it is not yet clear whether the PA is working equally well in certain districts where internal or structural obstacles may be inhibiting full implementation.

In some cases, there are indications of a competitive rather than cooperative relationship between a region and the districts within it, or between the capital and local assistance programs within a district. Such conflicts appear to be at least partly a funding issue—what a unit is funded to do, as opposed to the work that needs to be done for the benefit of the resources and Caltrans as a whole. For the most part, at staff level, PQS appear cooperative and willing to reach out to help one another, except where they have been discouraged from doing so. For instance, several occasions were observed where staff, on their own initiative or at their supervisor's direction, were reluctant to conduct peer reviews or approve documents because "it wasn't their job," or not what they were funded to do. Similarly, there has been competition between the capital and local assistance programs, with a tendency to give priority to Caltrans projects over local agency jobs. Resolving these issues is largely dependent on management direction, which could seek to emphasize teamwork over territory as "one Caltrans," a bedrock concept in the PA.

Overall, clarification of staff roles, more organizational consistency, better cooperation between units, and clearer delineation of lines of authority that take changed responsibilities under the PA into account would aid accountability and tracking and also improve project delivery.

CONCLUSION

The PA has proven to be highly successful, and it has clearly accomplished the goals of the signatory agencies, as evidenced by the results of the first six months' review. While some areas remain where additional effort appears warranted, Caltrans PQS, who bear much of the burden for implementation, have embraced the PA and demonstrated their commitment to intelligent and conscientious implementation of its provisions.

These first six months under the PA were a time of learning for all, with admittedly some missteps along the way, but the result has been clearer understanding and more efficient implementation of the PA. Several minor misinterpretations were reconciled, more careful tracking mechanisms instituted and appropriate levels of documentation clarified. The consistency review period was also valuable in regularizing PA implementation statewide.

The process of learning how to work with the PA and how to interpret correctly its provisions is still ongoing. Consequently, Caltrans welcomes further guidance from FHWA, ACHP, and the SHPO on any of the issues described above, or as otherwise needed to comply with the intent and the spirit of the Section 106 Programmatic Agreement.